

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

TALMADGE PARK, INC.<sup>1</sup>

Employer

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 371<sup>2</sup>

Petitioner

and

NEW ENGLAND HEALTH CARE EMPLOYEES  
UNION, DISTRICT 1199, SEIU<sup>3</sup>

Intervenor

Case No. 34-RC-2140

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates a skilled nursing care facility in East Haven, Connecticut. The Petitioner and Intervenor seek to represent a service and maintenance unit

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

<sup>2</sup> The Petitioner's name has been corrected to reflect its recent disaffiliation from the AFL-CIO.

<sup>3</sup> The Intervenor's name has been corrected to reflect its recent disaffiliation from the AFL-CIO.

consisting of approximately 89 full-time and regular part-time certified nursing assistants (herein CNAs), lead CNAs, housekeeping employees, laundry employees, cooks, dietary aides, cooks/dietary aides, the carpenter and maintenance employees. The Employer, contrary to the Petitioner, seeks to include an additional 23 licensed practical nurses (herein LPNs), the Resident Care Plan/Minimum Data Statistics Coordinator (herein RCP/MDS Coordinator), the nurse scheduler, the Assistant Business Office Manager, four receptionists, the courier, the physical therapy/rehab aide, and two recreation aides. Although the Intervenor does not oppose the inclusion of the physical therapy/rehab aide, the nurse scheduler and the receptionists, it does, along with the Petitioner, oppose the inclusion of the remaining positions sought by the Employer.

For the reasons noted below, I find that the nurse scheduler, the four receptionists, the courier and the physical therapy/rehab aide share a sufficient community of interest with the petitioned for employees to require their inclusion in the unit found appropriate herein. I further find that the LPNs, the RCP/MDS Coordinator, and the Assistant Business Office Manager lack a sufficient community of interest to warrant their inclusion in the unit found appropriate herein. Finally, I shall permit the recreation aides to vote subject to challenge in the election directed herein.

1. Overview of Operations

Primarily responsible for the operation and overall supervision of the facility is Administrator Ted Vinci. The following eight department heads report directly to Vinci: Director of Nursing Services (DNS) Evelyn Post, Dietary Service Director April Tarquino, Business Office Manager Pam Knapp, Environmental Services Director Maria Levatino, Recreation Program Director Beverly Gucciardini, Rehabilitation Director Bryan LaBelle, and Social Services Director Gail Zimmerer-Bonsai. The parties stipulated that all of the above-described individuals, as well as Assistant Director of Nursing Services (ADNS) Carl Sutton and all RN Shift Supervisors, are supervisors within the meaning of Section 2(11) of the Act and should be excluded from any unit found appropriate.

The Employer's facility is divided into three, thirty bed nursing wings, all located on the first floor. Also located on the first floor of the facility are resident dining areas, the dietary department, an employee dining room, the housekeeping and laundry departments, the shift supervisors' office, the recreation department office, the social services office, the DNS' and ADNS' offices, the Administrator's office and the business

office. Only one wing of the facility has a second floor, and located on that floor is the rehabilitation department, a beauty salon, storage space, a community room and offices for the owners of the facility.

The facility operates 24 hours a day, 7 days per week. The nursing department employees work three shifts as follows: 7:00 a.m. to 3:00 p.m. (day shift); 3:00 p.m. to 11:00 p.m. (evening shift); and 11:00 p.m. to 7:00 a.m. (night shift). Dietary department employees work a variety of shifts covering the day, evening and night. Housekeeping employees work an unspecified number of shifts covering the hours of 6:00 a.m. to 3:00 p.m. The laundry department operates a number of shifts covering the day, evening and night. The business office operates 8:30 a.m. to 4:30 p.m., Monday through Friday, with a receptionist on duty until 8:00 p.m. weekdays, and from 9:00 a.m. to 5:00 p.m. on weekends. The remaining departments generally operate for eight hours each day, starting between 7:00 and 9:00 a.m. and ending between 3:00 and 5:00 p.m.

All employees, including those in dispute, are hourly paid, punch a time clock, are subject to the same rules and policies, take lunch and break periods of the same duration in the same areas of the facility, and utilize the same parking lot. All hourly employees are eligible for the same health and dental insurance, life and disability insurance, vacation and paid time off, a 401(k) plan, and are provided with lunch and dinner for a nominal fee. All employees wear the same Employer-issued identification badges and receive the same general orientation when initially hired.

## 2. Nursing Department Employees

DNS Evelyn Post has overall responsibility for the nursing department, which consists of approximately 90 to 95 employees. Reporting directly to Post are ADNS Carl Sutton and six RN Shift Supervisors. The remaining nursing department employees consists of 23 LPNs, including the RPS/MDS Coordinator, and 60 to 65 CNAs, including the nurse scheduler. The nursing wings are normally staffed by one charge nurse LPN and four CNAs per wing on the day shift; one charge nurse LPN and three CNAs per wing on the evening shift; and one charge nurse LPN per wing and a total of five CNAs on the night shift.<sup>4</sup> DNS Post works Monday through Friday, 8:30

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<sup>4</sup> No party contends that charge nurse LPNs are supervisors within the meaning of Section 2(11) of the Act.

a.m. to “whenever” and ADNS Sutton works 7:00 a.m. to 3:00 p.m., Monday through Friday.

The LPNs primary duties are administering medication to residents, providing medical treatments, taking vital signs, assessing skin conditions, communicating with and taking orders from physicians, communicating with family members, and documenting information in medical records and 24 hour reports. Further, LPNs implement and adjust resident care plans, are responsible for completing incident reports, which include changes in a resident's status, accidents or physical abuse. Upon a resident's admission to the facility, LPNs conduct initial interviews, complete a body audit or skin assessment and other assessments required by the State. LPNs, like all nursing staff, are expected to answer residents call bells, if necessary, to toilet and assist residents as needed. LPNs are responsible for reviewing daily work assignments with CNAs at the beginning of a shift, for adjusting those assignments based on residents needs, and for overseeing the work performed by CNAs.

LPNs acquire the necessary skills to perform these functions by first completing a 15 month educational and training program, and then passing a State of Connecticut licensing exam. In performing their daily functions of dispensing medication to residents, performing skin assessments, administering treatments and otherwise evaluating the daily condition of residents, LPNs exercise their independent judgment and utilize the knowledge and skills they acquired from their specialized education and training.

LPNs attend monthly meetings, which are attended only by licensed nursing department personnel, to discuss changes to nursing department policies. LPNs also attend patient care conferences with resident's family members to review and discuss resident care plans. In this regard, LPNs are responsible for monitoring and making changes to a resident's care plan as necessary. The LPN's wage rate is \$21.50 to \$26.50 per hour. The LPNs are required to wear hospital “scrubs”.

The Employer is required by law to have an RCP/MDS Coordinator, who must be either an LPN or an RN. At the Employer's facility, the RCP/MDS Coordinator is an LPN who works out of an office next to the ADNS' office, Monday through Friday, 8:00 a.m. to 4:00 p.m. She does not wear a uniform. The RCP/MDS Coordinator is responsible for completing a “minimum data statistics” (MDS) form, which appears to be

required by law and contains various assessments of a resident pertaining to his/her physical, mental and dietary status. This information placed on the MDS form is obtained by the RCP/MDS Coordinator from the various departments in the facility. The RCP/MDS Coordinator also coordinates the patient care conferences with resident family members and facility staff, which may require her to update the resident care plan at the time of the meeting. The RCP/MDS Coordinator also attends morning meetings with the Administrator, the ADNS, representatives from the social work department, the Dietary Services Director, and occasionally various other department heads.

CNAs primarily assist residents with respect to personal hygiene and the activities of living. More specifically, CNAs assist residents with bathing, dressing, grooming, hygiene, toileting and feeding. CNAs may also assist LPNs when LPNs administer treatments. CNAs take residents' vital signs and, upon admission, take inventory of a resident's personal items. CNAs fill out flow sheets which track each resident's activities of living. Such flow sheets become a part of the resident's medical records once the flow sheet is signed by an LPN or RN. Approximately three former CNAs are presently LPNs at the facility, and two CNAs are currently enrolled in a program to become an LPN. CNAs cannot administer medication, perform treatments, take physicians orders or document information in the patients' medical records or cardex. CNAs do not attend the monthly licensed nursing meetings or patient care conferences. CNAs need only complete a certification program; they are not required to be high school graduates. The CNAs wage rate is \$9.25 to \$16.16 per hour. CNAs are required to wear hospital "scrubs".

The nurse scheduler, Patricia Hanson, is a CNA who is primarily responsible for preparing the monthly nursing department work schedule, and for filling nursing department vacancies that occur on a daily basis.<sup>5</sup> In preparing the monthly schedule, Hanson considers each employees' regular work schedules and then takes into account all scheduled vacations and other time off requests. In filling vacancies caused by employee call outs and other employee absence, she calls employees from a prepared list of available employees. If none of the listed employees are available, the nurse scheduler can ask employees currently working to work overtime. The nurse scheduler

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<sup>5</sup> No party contends that the nurse scheduler is a supervisor within the meaning of Section 2(11) of the Act.

is also responsible for ordering, stocking and maintaining an inventory of nursing department supplies. She does this by picking up inventory sheets filled out by LPNs and CNAs on the resident care wings, obtaining the necessary supplies from two supply closets, one outside of the kitchen and one on a resident care wing, and then delivering the supplies to the resident care wings. Hanson occasionally assists nursing staff by getting food trays or other items for residents. She has an office on one of the resident care wings and typically works from 8:30 a.m. to 4:30 p.m. She is paid \$15.81 an hour.

Based upon the foregoing, and the record as a whole, I find that the LPNs are technical employees who do not share a sufficient community of interest to warrant their inclusion in the unit found appropriate herein. More particularly, I note that the LPNs have specialized skills and educational training which permits them to perform distinct functions involving the use of independent judgment and requiring the use of their specialized training. See generally, *Park Manor Care Center*, 305 NLRB 872 (1991); *Hillhaven Convalescent Center*, 318 NLRB 1017, 1017-1019 (1995); *Lincoln Park Nursing Home*, 318 NLRB 1160, 1161-62 (1995). Moreover, I note that the LPNs are paid at a much higher wage rate than any of the other petitioned-for employees, and that there are a sufficient number of them to warrant their representation in a separate unit. *Hillhaven*, *supra* at 1019 and fn. 10; *Lincoln Park*, *supra* at 1161-62. Finally, the Employer has presented no evidence of any special circumstances that requires the inclusion of the LPNs in the petitioned-for unit.<sup>6</sup> Accordingly, I shall exclude the LPNs from the unit found appropriate herein.

I further find that the RCP/MDS Coordinator, who is also an LPN, is a technical employee who does not share a sufficient community of interest to warrant her inclusion in the unit found appropriate herein. In this regard, she spends the majority of her time

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<sup>6</sup> In reaching this conclusion, I note that the cases cited by the Employer in its brief do not support its contention that the LPNs must be included in the petitioned for unit. To the contrary, in both *Newington Children's Hospital*, 217 NLRB 793 (1975) and *Jewish Hospital of Cincinnati*, 223 NLRB 614 (1976), the Board excluded LPNs from the petitioned-for service and maintenance units. In addition, the unit sought by the petitioner in *Baker Hospital*, 279 NLRB 308 (1986), which was approved by the Board, specifically included technical employees and the inclusion of the LPNs was not at issue. Similarly, in *Mt. Airy Foundation*, 217 NLRB 802, 803 (1975), the Board approved the inclusion of LPNs and other positions in a hospital-wide unit only because the parties agreed to that unit. Finally, *Children's Hospital of Pittsburgh*, 222 NLRB 588, 591 (1976), is clearly distinguishable. In that case, the Board excluded the two LPNs from a petitioned-for unit of technical employees because they did not exercise the requisite independent judgment to be classified as technicals and did not, in that facility, perform technical work.

in her office utilizing her LPN skills preparing MDS forms and modifying resident care plans. In performing her duties, the RCP/MDS Coordinator primarily interacts with department heads, licensed nursing staff and family members. Accordingly, I shall exclude the RCP/MDS Coordinator from the unit found appropriate herein.

Finally, I find that the nurse scheduler shares a sufficient community of interest with the petitioned-for employees to require her inclusion in the unit found appropriate herein. In this regard, the nurse scheduler is a CNA whose duties regularly bring her into contact with other employees in the petitioned-for unit. She has the same educational requirements as other unit employees, and is paid in a similar wage range. Accordingly, I shall include the nurse scheduler in the unit found appropriate herein.

### 3. Business Office Department Employees

Business Office Manager Pam Knapp has overall responsibility for the Business Office Department. Knapp also has primary responsibility for the facility's human resource functions, including insurance and benefit administration. Reporting directly to Knapp are the Assistant Business Office Manager, medical records clerk,<sup>7</sup> four receptionists and the courier.

#### a. Assistant Business Office Manager

Assistant Business Office Manager (ABOM) Sheri Cacioppo works Monday through Friday from 8:30 a.m. to 4:30 p.m. in the business office located to the right of the lobby of the facility. Cacioppo was promoted from a part-time weekend receptionist to the ABOM position about three years ago. Cacioppo administers the weekly payroll and group insurance plans, manages resident funds, and ensures that medical records are complete before they are sent to storage. Cacioppo spends the majority of her day working in the Business Office performing these duties. In administering the weekly payroll, Cacioppo reviews employee time cards and has the authority to make adjustments to the payroll if necessary. Business Office Manager Knapp assists Cacioppo in handling the payroll and performs the entire payroll function when Cacioppo is absent. In administering the group insurance plans, Cacioppo enrolls new employees, provides information regarding the various insurance plans to employees, handles employee questions regarding insurance coverage and claim denials, and

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<sup>7</sup> The Employer does not argue for the inclusion of Sister Mary Anthony DeVito, the medical records clerk, in the petitioned-for unit, and neither the Petitioner nor Intervenor seeks to represent her.

deals with insurance representatives, as does Business Office Manager Knapp. In managing resident funds, the Cacioppo handles residents' deposits and withdrawals through a window in the business office, and creates quarterly statements reflecting each resident's funds. She also performs any work that the Business Office Manager does not have time to complete. With respect to medical records, Cacioppo ensures the medical records are complete before they are sent to storage and primarily deals with the DNS in handling any incomplete documents. The remainder of Cacioppo's time is apparently spent occasionally "thinning" out medical records by removing unnecessary documents from the files. This work is performed in the chart rooms that are located behind the three nursing stations on the wings. She earns \$19.25 an hour and does not wear a uniform.

Based on the foregoing and the record as a whole, I find that the ABOM is a business office clerical employee who does not share a sufficient community of interest to warrant her inclusion in the petitioned-for unit. See *Rhode Island Hospital*, 313 NLRB 343, 359 (1993). In this regard, I note that the ABOM performs traditional business office clerical functions in a separate work area, where she works closely and performs overlapping duties with the Business Office Manager, a position the parties agreed to exclude. Moreover, the ABOM has very limited contact with other employees in the petitioned-for unit, and she is paid at a much higher wage rate than any of the other petitioned-for employees. Accordingly, I shall exclude the Assistant Business Office Manager from the unit found appropriate herein.

b. Receptionists

There is one full-time receptionist who works from 8:30 a.m. to 4:30 p.m., Monday through Friday, and four part-time receptionists, who cover evening and weekend hours. All four receptionists perform traditional receptionist duties such as answering the telephone, typing and making photocopies. The receptionists also receive lunch and dinner orders from employees, collect money for such orders, and then call the orders into the cook. Receptionists type daily resident menus for breakfast, lunch and dinner, and post the menus in the resident dining rooms. They also type various forms at the request of employees, including employment verification forms and forms for medical assistance or day care programs. Receptionists appear to



work in an open area by the front entrance that is regularly accessed by all employees. Receptionists earn between \$8.25 and \$13.00 an hour.

The full-time receptionist, Jason Hilton, also prepares the daily census, statistical reports and the facility roster, which tracks the “comings and goings” of residents on a daily basis. He is responsible for completing admissions paperwork and making identification bracelets for residents, which are delivered to the nursing staff by one of the receptionists. Hilton also arranges transportation for residents’ appointments outside of the facility, and may help transport a resident from their wing to the lobby. Hilton also works about 8 hours a week in the maintenance department, moving boxes and furniture and painting as needed. Part-time receptionist Ashley Dwyer has been training in the nursing department and assists in ordering nursing supplies and “thinning” and organizing medical charts at the nurses stations. Another part-time receptionist types the daily assignments for CNAs.

Based upon the foregoing and the record as a whole, I find that the receptionists share a sufficient community of interest with employees in the petitioned-for unit to require their inclusion in the unit found appropriate herein. *See Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084, 1091, 1094-95 (2001); *Lincoln Park Nursing Home, supra*, 318 NLRB at 1164; *Rhode Island Hospital, supra*, 313 NLRB at 362-63; *Charter Hospital of St. Louis*, 313 NLRB 951 (1994). In reaching this conclusion, I note that although the receptionists do not wear a uniform and report to the Business Office manager, they do not perform traditional business office functions, and there is no evidence that they work in a separate work area. To the contrary, receptionists have far more opportunities to interact with other employees in the petitioned-for unit than they do to interact with the Assistant Business Office Manager or the medical records clerk. The receptionists appear to work in an open area near the front entrance that is regularly used by all employees, and have regular contact with petitioned-for employees when taking meal orders, posting menus and handling paperwork and transportation for residents. In addition, two of the four receptionists regularly work in other departments where petitioned-for employees work. Like other employees in the petitioned-for unit, receptionists require no more than a high school diploma, are paid within a similar wage range, and have previously held positions in the dietary, recreation and nursing

departments. Accordingly, I shall include the receptionists in the unit found appropriate herein.

c. The Courier

The courier, Anthony DeVito, works about 10 hours a week, two hours a day performing errands for the facility. DeVito primarily goes to the post office to mail certified letters and pick up mail, and to the bank to make deposits. DeVito may also perform errands for different departments, such as buying items at the hardware store for maintenance, picking up videos for the recreation department, purchasing supplies for the nursing department, and bringing laundry to the laundromat for the laundry department. DeVito comes into contact with employees in these departments when delivering such items. DeVito is paid \$11.10 an hour and utilizes his own vehicle to perform his courier tasks. There is no evidence as to whether or not DeVito is compensated for the use of his personal vehicle. The only requirements for the courier position are a high school diploma and a driver's license. DeVito is the Uncle of the wife of one of the owners of the facility, and is commonly referred to as "Uncle Tony".

Based upon the foregoing and the record as a whole, I find that the courier shares a sufficient community of interest with employees in the petitioned-for unit to warrant his inclusion in the unit found appropriate herein. More particularly, I note that DeVito has regular work related contacts with employees in the petitioned-for unit, that he has similar educational requirements for his position, and that he is paid in a similar wage range as other employees in the petitioned-for unit. In reaching this conclusion, I note the absence of evidence establishing that he enjoys a special status or receives benefits or privileges not accorded other employees. Thus, the mere fact that the courier is the Uncle of the owner's wife does not establish that his interests are aligned with the Employer's owners, thereby removing him from the community of interest shared with other employees. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490 (1985) and cases cited therein.<sup>8</sup> Accordingly, I shall include the courier in the unit found appropriate herein.

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<sup>8</sup> To the extent the Petitioner relies upon the Board's decision in *P.A. Mueller and Sons, Inc.*, 105 NLRB 552 (1953), I find it is inapposite for the reasons noted by the Board in its subsequent decision in *International Metal Products Co.*, 107 NLRB 65 (1953).

#### 4. The Physical Therapy/Rehab Aide

The physical therapy/rehab aide (PT aide) works from 8:00 a.m. to 4:00 p.m. in the Rehabilitation Services Department located on the second floor of the facility under the direct supervision of Director Bryan LaBelle. The PT aide assists the physical therapists in their treatment of residents. This involves transporting the resident to therapy sessions, ambulating residents and administering restorative programs to the residents. The PT aide performs her duties based on a daily schedule of each resident's rehabilitation treatments prepared by Director La Belle. Every morning, the PT aide will communicate with CNAs about the status of residents, including new admissions and deaths, and will notify the CNAs as to which residents are scheduled for therapy that morning. The PT aide then prepares the residents for therapy and transports them to the therapy session in a wheelchair or by assisting them while walking to the therapy room. On a daily basis, the PT aide is responsible for performing restorative programs with residents who have been discharged from therapy, which includes ambulating and assisting residents with feeding. These duties are conducted in the resident's room, on the resident care wings or in resident dining rooms. The PT aide also conducts weekly checks of wheelchairs and other rehabilitation equipment located on the resident care wings. The PT aide also performs some clerical duties, including filing resident paperwork in their medical records located in the chart rooms behind the nurses stations on each resident care wing.

The PT aide is hourly paid, wears "scrubs" and is paid in a similar wage range as maintenance employees and cooks. The PT aide attends inservices with CNAs, therapy staff and sometimes licensed nurses. There are no educational requirements for becoming a PT aide, and the position requires only the ability to read and write English.

Based upon the foregoing and the record as a whole, I find that the PT aide shares a sufficient community of interest with employees in the petitioned-for unit to require her inclusion in the unit found appropriate herein. More particularly, I note that the PT aide is primarily involved in providing direct assistance to residents, has regular work related contacts with employees in the petitioned-for unit, has similar educational requirements for her position, and that she is paid in a similar wage range as other

employees in the petitioned-for unit. Accordingly, I shall include the physical therapy/rehab aide in the unit found appropriate herein.

5. Recreation Aides

There are two recreation aides, identified only as Amy and Anna, who report directly to Recreation Program Director Beverly Gucciardini. The recreation aides are primarily responsible for conducting morning and afternoon group recreation programs for residents, and daily recreation programs with individual residents. For example, the recreation aides may plan and conduct a bingo game for residents. This would require them to schedule individual residents to participate in the bingo game, set up the area where the game will be held (such as a resident dining room, lounge or outside picnic area), transport the residents to the game, and assist residents during the game. Individual programming includes visiting with the resident in their room and talking with them, reading a book or playing music. Recreation aides come into contact with CNAs when transporting residents to programs, conducting individual programming in the resident's rooms, or when assisting in feeding the resident during a food related activity. Recreation aides may come in contact with laundry department employees should they have occasion to have to retrieve something for the resident from the laundry room. The record reflects that on one occasion during the month prior to the hearing, maintenance employees assisted the recreation aides in setting up a room for a program. Housekeeping employees may be performing work in the same area where a program is being conducted or assist in setting up a room for a group program. Recreation aides are hourly paid and earn a similar wage rate as cooks and maintenance employees. They do not wear a uniform.

In support of its contention that the recreation aides must be included in the unit, the Employer proffered a job description entitled "Therapeutic Recreation Director", along with the testimony of its acting administrator, Michael Fiore, who is the administrator at another facility owned by the Employer and was substituting for the regular administrator during the latter's two-week vacation. According to Fiore, although the title of the job description is incorrect, the job description itself accurately describes the duties performed by the recreation aides. Thus, according to Fiore's undisputed testimony and as reflected in the job description, the recreation aides participate with the Recreation Program Director in creating the monthly calendar of recreation

programs; are involved in the creation of an individualized recreation program for each resident, implementing the program, assessing and documenting the resident's response to the program, and making adjustments to the program as necessary; and exercise independent judgment in formulating, assessing and adjusting individualized recreation programs for each resident. Although the job description requires some type of associates or bachelor's degree in a related field, or a high school diploma with completion of a "Connecticut certificate program in therapeutic recreation", Fiore did not know whether either of the recreation aides met such requirements. The record reflects no other evidence regarding the recreation aides' educational background or certification status. Additionally, Business Office Manager Knapp testified that the facility employed two therapeutic recreation directors exclusive of the department head, and that presently there were no employees classified as recreation aides at the facility.

The record contains insufficient evidence regarding the status of the recreation aides to make a determination regarding their placement in the petitioned for unit. In this regard, the record reflects the identity of the recreation aides as only "Amy and Anna". More importantly, it is unclear whether they hold the position of recreation aide, as testified to by Fiore, or are "Therapeutic Recreation Directors" as reflected in the job description and as referred to by Business Office Manager Knapp in her testimony. Although the job description clearly requires an advanced degree, training and/or certification, the record is unclear as to whether Amy and Anna are required to have such qualifications to perform their job duties or whether they possess the required degree or certification. Accordingly, I shall make no determination regarding the status of these individuals, and I shall permit the recreation aides/therapeutic recreation directors to vote, subject to challenge, in the election directed herein.

Accordingly, based on the entire record, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time certified nursing assistants (CNAs), lead CNAs, housekeeping employees, laundry employees, cooks, dietary aides, cooks/dietary aides, carpenter, nurse scheduler, receptionists, courier, physical therapy/rehab aide, and maintenance employees employed by the Employer at its East Haven, Connecticut facility; but excluding licensed practical nurses, the RCP/MDS Coordinator, the administrator, director of nurses, assistant director of

nurses, dietary service director, business office manager, assistant business office manager, environmental services director, recreation program director, rehabilitation director, social services director, shift supervisors, and guards, other professional employees and other supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

**Eligible to vote:** those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

**Ineligible to vote:** employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and commercial Workers Union, Local 371, or New England Health Care Employees Union, District 1199, SEIU.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The

undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before August 18, 2005. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at [www.nlr.gov](http://www.nlr.gov). This request must be received by the Board in Washington by August 25, 2005.

Dated at Hartford, Connecticut this 11<sup>th</sup> day of August, 2005.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
National Labor Relations Board  
Region 34